

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION**

UNITED STATES OF AMERICA

v.

DANIEL J. GARCIA

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7:19-cr-522-S1-4

DEFENDANT’S UNOPPOSED MOTION TO STRIKE SURPLUSAGE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, DANIEL J. GARCIA, Defendant, by and through his undersigned counsel, and respectfully moves to strike paragraphs 11, 64 (last sentence), and 76-77 as surplusage from the indictment (D.E. 30).

Rule 7(d), Federal Rules of Criminal Procedure, permits the Court, on the defendant's motion, to strike surplusage from an indictment. Fed. R. Crim. P. 7(d); *United States v. Hughes*, 766 F.2d 875, 879 (5th Cir. 1985). This remedy is provided for the defendant's protection, if “for example, the government asserts irrelevant or immaterial facts, particularly those that might prejudice the jury[.]” *Hughes*, 766 F.2d 875, 879. In such situations, the defendant may compel the deletion of the surplusage. *Id.*

The indictment alleges that Leo Lopez agreed to help “Person D, a friend of GARCIA, obtain employment[.]” in return for Mr. Garcia paying bribe payments to John Cuellar from Mr. Garcia’s IOLTA account. *See* D.E. 30 at § 64. The government has apparently agreed not to make reference to Person D at trial and to strike paragraphs 11, 64 (last sentence), and 76-77, as they refer to this person.

Accordingly, Mr. Garcia respectfully requests that paragraphs 11, 64 (last sentence), and 76-77 be stricken.

Respectfully submitted,

s/Christopher Sully
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CERTIFICATE OF CONSULTATION

Assistant U.S. Attorney Peter Nothstein indicated that the government is unopposed to this motion.

s/Christopher Sully
CHRISTOPHER SULLY

CERTIFICATE OF SERVICE

On June 21, 2021, this motion was served on all counsel of record via ECF.

s/Christopher Sully
CHRISTOPHER SULLY